

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION**

JOHN C. DUVALL, Register No. 444618,

Plaintiff,

v.

LT. LESTER D. ELDER,

Defendant.

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No. 05-4330-CV-C-NKL

ORDER

On June 29, 2006, the United States Magistrate Judge ordered plaintiff to show cause why his in forma pauperis status should not be revoked and his claims dismissed. The Magistrate Judge, upon review of plaintiff's claims under 28 U.S.C. § 1915, determined plaintiff to be subject to the three-strikes dismissal of section 1915(g), and that his claims seeking unredacted documents from the investigation that led to his criminal conviction as insufficient to allow him to proceed under the limited exception of section 1915(g) because they fail to allege danger of serious physical injury. The Magistrate Judge further determined plaintiff's claims to be duplicative of those filed in Duvall v. Social Security Admin., No. 05-4019 (W.D. Mo. 2005), which were dismissed by this court for failure to state a claim.

The court has conducted a de novo review of the record, including plaintiff's July 24, 2006 response to the order to show cause. The issues raised in plaintiff's response were adequately addressed in the show-cause order. The court is persuaded that the findings of the Magistrate Judge are correct and should be adopted.

To the extent plaintiff challenges that he was not a prisoner when he filed his claims in Duvall v. Seefeldt, No. 99-0106 (E.D. Mo. 2000), and Duvall v. Evans, No. 01-0036 (E.D. Mo. 2002), this court finds that the electronic case filing record reflects plaintiff to have been an inmate confined in the Marion County Jail. However, even without considering these two cases of which plaintiff states he was not a prisoner when filed, plaintiff still falls under the three-strikes provision of section 1915(g). See Duvall v. Dempsey, No. 05-0073 (E.D. Mo. 2005)

(plaintiff's claims dismissed, pursuant to 28 U.S.C. § 1915(e)(2)(B)); Duvall v. Social Security Admin., No. 05-4019 (W.D. Mo. 2005) (dismissed for failure to state a claim on which relief may be granted, pursuant to 28 U.S.C. § 1915A); Duvall v. Missouri Department of Family Services, No. 00-0099 (E.D. Mo. 2001) (defendants' motions to dismiss granted, and plaintiff's claims, in part, dismissed for failure to state a claim under 42 U.S.C. § 1983).

Plaintiff's motion to amend his complaint filed on February 21, 2006, seeks to name an additional defendant, Colonel Roger D. Stottlemire, Superintendent of the Missouri State Highway Patrol. Plaintiff alleges that Col. Stottlemire is responsible for the Department's policy which allows a designee to receive service of subpoenas regarding records held by the Department. Plaintiff alleges this violates his First Amendment rights. Defendant has filed objections to plaintiff's proposed amended complaint, and this court finds that the objections have merit. Plaintiff's proposed amendment is frivolous and is denied.

Remaining motions in this case are denied as moot in light of the instant order dismissing plaintiff's claims.

Inmates who file an appeal with the United States Court of Appeals for the Eighth Circuit are required to pay the full \$455.00 appellate filing fee, regardless of the outcome of the appeal. Henderson v. Norris, 129 F.3d 481, 484 (8th Cir. 1997). The filing of a notice of appeal is considered a consent by the inmate to allow prison officials to deduct an initial partial appellate filing fee and later installments from the prisoner's account.

IT IS, THEREFORE, ORDERED that plaintiff's motion to amend is denied [18]. It is further

ORDERED that plaintiff's in forma pauperis status is revoked because he is a three-strikes litigator, pursuant to 28 U.S.C. § 1915(g), and plaintiff's claims are dismissed for failure to state a claim, pursuant to 28 U.S.C. § 1915(e)(2). It is further

ORDERED that all remaining outstanding motions in this case are denied as moot [19, 22, 34, 36, 39, 45, 48, 53, 56].

/s/

NANETTE K. LAUGHREY

United States District Judge

Dated: August 28, 2006
Jefferson City, Missouri